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18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF GUAM**

20
21 **JULIE BABAUTA SANTOS, et. al.,**
22 **Petitioners,**

23 **-v-**

24
25 **FELIX P. CAMACHO, etc., et. al.**
26 **Respondents.**

FILED
DISTRICT COURT OF GUAM

OCT 29 2007 *nba*

JEANNE G. QUINATA
Clerk of Court

CIVIL CASE NO. 04-00006
(Consolidated with Civil Case Nos.
04-00038 and 04-00049)

SECOND DECLARATION OF JOHN
P. CAMACHO IN SUPPORT OF THE
BRIEF OF THE GOVERNOR,
GOVERNMENT, AND DIRECTORS
OF DOA AND DRT REGARDING 26
C.F.R. § 301.6212-2

1
2 I, John P. Camacho, hereby declare and state as follows:

3 1. I am the Deputy Director of the Department of Revenue and Tax ("DRT"). I make
4 this declaration on personal knowledge and based upon my knowledge of the official records on
5 file with the DRT. If called as a witness, I could and would testify competently as follows.

6 2. The purpose of this declaration is to supplement my previous declaration regarding
7 26 C.F.R. § 301.6212-2.
8

9 3. Although forty years ago the then-acting governor of Guam issued an executive
10 order indicating that IRS regulations generally apply to Guam, and although it is the practice of
11 DRT to institute most IRS regulations consistent with that, in some situations it is not practical
12 because the regulations do not reflect the realities of Guam or DRT. To the best of my
13 knowledge, therefore, in the forty years since the executive order issued, it has been the practice
14 of DRT not to institute some IRS regulations where not practical, and I know this to be a fact at
15 least since I joined the agency 26 years ago.
16

17 3. Here, 26 C.F.R. § 301.6212-2 provides for the IRS to update taxpayer addresses by
18 comparing data accumulated and maintained in the United States Postal Service National Change
19 of Address database ("NCOA"). DRT has never followed this particular procedure set forth in 26
20 C.F.R. § 301.6212-2 in updating taxpayer addresses due to the lack of financial and technological
21 resources, as more fully explained below. Rather, the DRT has always maintained the policy of
22 using the most reasonable and practicable means of enforcing the GTIT.
23

24 5. As background information, the NCOA is a database that the IRS leases from the
25 United States Postal Service. The original database became obsolete in 2004 and was replaced by
26 the NCOALink (the "Link") which is a more complicated system that encrypts address data
27 submitted by each state. Via the Link, the IRS updates their master files weekly, thereby
28 allowing for the most current address to be listed in their system.

1 6. Unfortunately, for DRT to access the Link, DRT would need to do a complete
2 overhaul of its current computer system, including re-programming the system and implementing
3 new hardware, since the Link does not provide the address data in a readable format complaint
4 with DRT's current system. The expense and time required to implement such system is
5 currently undetermined.

6 7. What is known, however, is that at this point, DRT lacks adequate staffing,
7 expertise, and technology to implement such an updated system. Since 2002, DRT has had an
8 average of 151 employees to staff all functions at DRT, which is the island's primary regulatory
9 agency charged with implementing not only the GTIT, but also all other local taxes as well. As a
10 result of inadequate staffing, the DRT is still several years behind in processing taxpayer returns.
11

12 8. Nor is this the only challenge faced. DRT is not just in charge of tax enforcement
13 and administration, but is also in charge of maintaining and issuing all of the island's business
14 licenses and records, monitoring all of the island's motor vehicle records, including insurance
15 records, and all of the island's land records.
16

17 9. DRT's compliance with certain IRS regulations such as the present one is virtually
18 impossible, particularly when such compliance involves disclosure or exchange of sensitive data
19 to which the IRS, but not DRT, is privy. DRT seeks to comply with all the statutory
20 requirements. But DRT can only do so much with its limited resources, and compliance with IRS
21 regulations can sometimes exceed its resources.
22

23 10. The IRS can comply with its requirements because its technological resources
24 allow it to subscribe to systems such as the Link, or it can reach contract agreements, usually
25 memorandums of understanding, with other federal agencies to allow them to access updated and
26 current information. Many of the IRC sections and regulations that DRT cannot comply with
27 require procedures that are relatively accessible to the IRS, but are not accessible to U.S.
28 territories and insular areas that mirror the code. The present regulation is such a regulation.

11. It is for these reasons that the DRT has made a policy of following the tax regulations whenever reasonably practicable. But when, as in this instance, the regulations do not account for the unique circumstances on Guam, DRT follows alternative procedures that attempt to effectuate the same or similar results.

12. The DRT recognizes the importance of maintaining and updating taxpayer addresses. However, it is impossible to follow the current system contemplated by 26 C.F.R. § 301.6212-2 without additional resources and technological expertise that simply do not exist at DRT at the present time.

I swear under penalty of perjury under the laws of the Territory of Guam and the United States of America that the forgoing is true and correct.

Executed on this 29th day of October, 2007 in Tamuning, Guam.

John P. Camacho
JOHN P. CAMACHO